

<b>Programme-</b>	<b>B.A.LL.B (vth sem.)</b>
<b>Course -</b>	<b>Drafting pleading &amp; Conveyancing</b>
<b>Course Code-</b>	<b>314</b>
<b>Sem-</b>	<b>Vth sem.</b>
<b>Year-</b>	<b>2020-21</b>
<b>Unit-</b>	<b>1</b>
<b>Topic-</b>	<b>Drafting pleading &amp; Conveyancing</b>
<b>Sub-Topic-</b>	<b>Plaint</b>
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## **PLAINT**

### **Introduction**

The plaint is a document for instituting a suit in the proper court of law. It\* is a very important document which is drafted by a pleader in consultation with his client. A civil suit shall be instituted by presenting a plaint to the court. There are different grades of courts in a State according to pecuniary, territorial or other exclusive jurisdiction with regard to the subject-matter. Every suit shall

be instituted in the competent court.

The plaint is the basis of preferring one's claim in a court of law and hence it is a very important document. Therefore, before framing a plaint it is essential to ascertain as to what particulars are necessary to include. Order VII, Rule 1 of C.P.C. is relevant in this context which runs as follows :

"The plaint shall contain the following particulars :

- (a) the name of the court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter or the suit for the purposes of jurisdiction and of court-fees, so far as the case admits."

A pleader has to ensure that the plaint must contain the above particulars as per the provisions of law.

It is also pertinent to know that civil suits are dealt with as per the provisions of the Code of Civil Procedure, 1908. The Code of Criminal Procedure, 1973 contains the provisions for the criminal cases.

The particulars of the plaint are being dealt with one by one in the following manner -

### **Name of the courts**

The plaint shall contain the name of the court in which the suit is brought such as

In the Court of District Judge at.....

In the Court of Small Causes at.....

In the Court of Munsif at.....

In the High Court of Judicature at.....

In the Supreme Court of India at New Delhi.

### Description of Plaintiff.

The next item of plaint shall contain the name, description and place of residence of the plaintiff.

However, in case of more than one plaintiffs, the name, description and place of residence of each plaintiff must be given. The correct name of the parties should be mentioned failing which the difficulty will arise in serving notice or summons. Therefore, correct description is needed to be mentioned in the plaint in respect of the concerned parties. The residential address of the plaintiff should also be accurately mentioned. In case of more than one plaintiff, the names of each concerned plaintiff should be given and numbered as 1, 2, 3, 4 along with the complete and correct address.

It is also very essential to decide the parties while instituting a suit. A plaintiff therefore, must select as to which party should be included should be excluded. A plaintiff may exclude parties whose act is essential or he may include parties whose presence is required. Thus, it is the responsibility of the plaintiff to choose the right parties to a suit. Parties may be categorized as necessary parties and parties. In this context Order I, Rule 10(2) stipulates as follows :

The court at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the

questions involved in the suit, be added."

The distinction between necessary party and proper party is very significant inasmuch as without participation of the necessary party an effective order is not possible to be passed but effective order can be passed even without participation of the proper party but participation of proper party is essential for the sake of complete and final decision on involved in the proceeding of a suit.

### **(c) Description of Defendant.**

The plaint shall next contain name, description and place of residence of the defendant. It is necessary to give correct name, description and complete address of the defendant as in the case of plaintiff.

In case of suit against the Government it shall be sufficient to mention the Central Government or against the State Government :

"The State of..... "

If the suit is instituted against a firm or a corporation having more than one person, the name, description, place of residence as also the place of business of the firm or corporation need be given. In case of more than one defendant, the names of each concerned defendant along with description and place of residence should be given and numbered as 1, 2, 3, 4. It may be mentioned here that description includes—

Name of the father, age of the person concerned and correct postal address.

### **Description of Parties:**

Union of India, through Secretary, Ministry of Industry,

New Delhi.....Plaintiff

versus

Surendra Nath, S/o Mahendra Nath, Proprietor, Surendra Engineering



Industry, Industrial Area, Okhla, New Delhi..... Defendant.

Satish Chandra, S/o Rajendra Prasad, Resident of 16, Dilkusha,

Lucknow.....Plaintiff.

versus

State of UP.through Secretary, Ministry of Food & Civil Supplies,  
Secretariat, Vidhan Sabha Marg, Lucknow.....Defendant.

State of Uttar Pradesh, through Secretary,

Ministry of Labour & Employment, Secretariat, Lucknow.....Plaintiff

versus

Rama Flour Mills, 32 Aishbagh Road, Lucknow Defendant.

**(d) Plaintiff as Minor or Person of Unsound Mind.**

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. Where the plaintiff is of unsound mind, a statement to that effect should be made.

**(e) Facts constituting the cause of action.**

This is the most important item of a plaint that in its body the facts constituting the cause of action and the date when it arose must invariably be given. A separate paragraph duly numbered should be provided for each material fact. It is important to note that different facts should not be mixed up in same paragraph which may create confusion to the court.

### **(f) Court's Jurisdiction.**

It is usual to state the nature of the suit and the value thereof for purposes of jurisdiction of the court. It is the duty of the pleader to ensure that the suit is instituted in the competent court having jurisdiction to try the same. It is the essential requirement of the plaint that it must contain the facts showing that the court has jurisdiction. [Order VII, Rule 1(f) of the C.P.C.]

In this context Sections 15 to 20 of the Code of Civil Procedure, 1908 are to be referred which lay down :—

**Section 15.- Court in which suits to be instituted.**—Every suit shall be instituted in the court of the lowest grade competent to try it.

**Section 16.- Suits to be instituted where subject-matter situate.**—Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of immovable property actually under distraint or attachment;

shall be instituted in the court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

## **Relief.**

The plaint shall finally contain the relief to be claimed by the plaintiff either simply or in the alternative. (order VII, Rule 7 of the C.P.C) lays down that:

"Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

A general rule is that the plaintiff is not entitled to relief for which there is no foundation in the plaint. But there is one exception, that is, in a case where on the basis of pleadings, issues and the evidence, the relief is apparent and clear, because the primary duty of court is to do justice and rules of procedure are meant to advance the cause of justice and not to impede it. Vishram Arjun v. Irukulla Shankariah, AIR 1957 Andh. Pra. 784].<sup>2</sup>

Under Order VII, Rule 7, C.P.C, the court can grant relief on the basis of the facts proved in the case. A plaintiff ought to be granted such relief as he is entitled on the facts proved upon the evidence in the case even if the plaint does not contain a specific prayer for the relief. Multipurpose Cooperative Society v. State of Bihar, AIR 1984 Punj. 128]. Hence equitable relief under Order VII, Rule 7, C.P.C. may be given, even though ground on which relief is sought have not been mentioned in accordance with the rule. Kashi Chaudhary v. Mujtaba Hasan, 1981 BLJ<sup>3</sup>

If the plaintiff wishes to claim more than one relief in regard to same cause of action then each relief should be stated separately and they should not be mixed up. It is also essential that all reliefs must be claimed in a suit for the same cause of action failing which the plaintiff shall not be entitled to bring in a new suit for the omitted relief.

**(h) Relinquished portion of claim.**—The plaint shall specifically contain the amount of relinquished portion of the claim of plaintiff as per the provision of Order VII, Rule 1 of C.P.C. It is open for the plaintiff to do so but a specific mention should be made in the plaint.

**(i) Valuation of suit.**—A suit has to be valued for purposes of pecuniary jurisdiction according to the market value of the subject-matter of suit. Order VII, Rule 1(i) lays down that "a statement of the value of the subject-matter or the suit for the purposes of jurisdiction and of court-fees, so far as the case admits."

The valuation in a suit does not take into consideration for territorial jurisdiction. It is meant for the sake of pecuniary jurisdiction. The amount of value of the subject-matter of a suit is to be taken that is assigned by the plaintiff to his claim. The valuation given in the plaint determines the forum of appeal. **Jog Lai v. Harnarayan Singh**, ILR 10 All 524] In this context the provisions of the Court Fees Act and Suits Valuation Act as also the High Court Rules should be referred to.

Section 149 of the Code of Civil Procedure, 1908 lays down :

"Power to make up deficiency of court-fees.—Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee, and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

The above provision is very relevant and should be construed along with Section 4 and 28 of the Court Fees Act and Section 11 of the Suits Valuation Act.



## Signing and Verification

In the end the plaint should bear the signature and verification of the parties concerned. The plaint shall be considered as improper if it is not been signed and verified.

Order VI, Rule 14 and Order VI, Rule 15 in respect of signing and verification of the plaint respectively lays down

Order VI, Rule 14 : ***"Pleading to be signed.***—Every pleading shall be signed by the party and his pleader (if any) : Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Order VI, Rule 15 : ***Verification of Pleadings*** : (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

The verification is intended to show that the person signing and verifying the plaint knows the contents and is responsible for the statements made in the plaint. It is an important part to verify the contents of the plaint since false verification is an offence and punishable under Section 193 of the Indian Penal Code to the effect of giving false evidence. The verification shall be signed by the plaintiff or the person so verifying and shall state the date on which and the place at which it was signed. In pleadings on behalf of Government respondent it must be signed by duly authorized officer. A corporation or company registered under the Companies Act being the plaintiff in a suit,

the Secretary or any Director or principal officer of the Corporation or company can sign and verify the plaint who must be fully acquainted with the case and is able to depose to the facts. It would be proper to state in the plaint that the person signing and verifying the plaint is the principal officer and is able to depose to the facts of the case. **Laxmi v. Puma Chandra**, AIR 1935 Cal 770.)<sup>4</sup>

The court has discretion to ignore defect in verification which is an error. Requirements of Order VI, Rules 14 and 15 are procedural only and the party can rectify such deficiency at a later stage. **Rani Piri v. Collector, Sub-Division, Abohar**, 1994 PunjLJ 410.)<sup>5</sup>

## **Replication.**

Replication is the reply given by the plaintiff to the written statement of the defendant. It is the plaintiff's answer to the defendant's pleas. It is filed in compliance of the Court's order with an objective to know the plaintiff's stand on the counter questions raised in the defendant's written statement. However, the plaintiff is not allowed to introduce a new case inconsistent with the earlier pleadings as contained in his plaint. The plaintiff is required to answer only counter question raised by the defendant in written statement. In this context Order VIII, Rule 9 of C.R.C. empowers the court to ask the plaintiff to file subsequent pleadings or a reply to answer the pleas raised by the defendant in his written statement and fix a time for presenting the same. The plaintiff of his own cannot file such a reply except by way of reply to plea of set-off and counter claim raised by the defendant. **Venkataswami v. Uppilpalayam V.V. Nidhir**, AIR 1935 Mad 117.)<sup>6</sup>

## **Return of Plaint.**

According to Order VII, Rule 10 of the Code of Civil Procedure, 1908, the plaint shall at any stage of the suit be returned to be presented to the court in which the suit should have been instituted. This rule deals with the jurisdiction of the court and whenever the court discovers that it had no jurisdiction to entertain the suit, it is empowered to order its return for being presented to the proper court.

## **Rejection of Plaintiff**

The court can reject a plaintiff at any stage of the proceeding under Order VII, Rule 11 of the Code of Civil Procedure, 1908 which lays down :

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, but the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court fails to do so;
- (c) where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement in the plaintiff to be barred by any law ;
- (e) where it is not filed in duplicate;<sup>1</sup>
- (f) where the plaintiff fails to comply with provisions of Rule 9<sup>1</sup>:<sup>2</sup>

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1. Ins. by Act 46 of 1999, Section 17(H), (w.e.f. 1-7-2002).

2 Subs, by Act 22 of 2002, Section 8(ii) (w.e.f. 1-7-2002).

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

If the suit does not disclose any cause of action and is not maintainable, the question should be decided in preliminary issue. **Darul Ulum Islamia v Civil Judge, Basti**, 1986 All LJ 1130<sup>7</sup>

If an election petition does not disclose cause of action it can be dismissed summarily at the threshold of the proceedings under Order VII, Rule 11 of the C.P.C. **Samar Singh v. Kedar Nath**, AIR 1987 SC 1926<sup>8</sup>

In case it is found that the finding of the trial court was correct then before appeal could be heard on merit, appellants would be required to pay court fee as to make up deficiency in the plaint as well as in the appeal failing which appeal will be dismissed for want of court fee. **[Nihar Kaur v. Madan Lai]**, (1987-1) 91 PLR 339<sup>9</sup>

When plaint is returned by one court for presentation to proper court bearing jurisdiction, then unless plaint is presented to proper court of competent jurisdiction, it cannot be said that suit has been instituted. **[Gopal Ram v. Mohan Ram]**, 1995 (2) All RC 320<sup>10</sup>

When the court comes to the conclusion that the suit is not maintainable for any of the reasons given in Order VII, Rule 11 of the C.P.C. then the plaint has to be rejected. **[Ram Barai Bhagat v. Munni Lai Singh]**, 1984 BLJ 23<sup>11</sup>

## **Production of Documents**

Documents are required to be produced as per provisions of Order XIII, Rule 1, C.P.C. and Rule 2 of Order XIII, C.P.C. empowers the court to receive the documentary evidence at any subsequent stage of the proceedings provided good cause is shown to the satisfaction of the court for the non-production thereof, and the court receiving any evidence shall record the reasons for so doing. It is the well known principle that no evidence should be allowed contrary to the pleadings. The plaintiff, for getting any relief in his suit, must prove his own case as pleaded in the plaint.

### **Amendment of Plaint.**

The court may in terms of Order VI, Rule 17 of the Code of Civil Procedure allow the amendment to be made in the plaint. Order VI, Rule 17 of the C.P.C. lays down :-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be

necessary for the purpose of determining the real question in controversy between the parties.

## **Party to amend plaint.**

Pleadings are amended by the party within the time prescribed by Order VI, Rule 18 of the Code of Civil Procedure, 1908. Time had been fixed for amendment by the aforesaid rule to ensure expeditious disposal of suit.

Order VI, Rule 18 of the C.P.C. : **Failure to amend after order.**—If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the court.

Amendment seeking to change nature of suit or seeking to raise new facts, cannot be allowed. **Rajendra Singh v.State of Bihar**, 1995 (1) PLJR 474.]12

**Joinder of Parties.**—Rules pertaining to the joinder of plaintiffs and joinder of defendants are laid down in the Code of Civil Procedure, 1908. These rules are very pertinent whose object is to avoid multiplicity suits as the same subject matter concerning various persons can be decided in a single suit. Thus, the relevant rule reads as under :

Order 1 Rule 1—All persons may be joined in **one** suit as plaintiffs where--

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist as such persons, whether

jointly, severally or in the alternative; and

(b) If such persons brought separate suits, any common question of law or fact would arise.

there is also a provision under Order I, Rule 2 that the court may order a separate trial if in the opinion of the court joinder of plaintiffs may embarrass or delay the trial. But this is the discretionary power of the court. The rule lays down that "where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit the put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

Order I, Rule 3 of C.R.C. lays down the provision in regard to joinder of defendants as in the case of plaintiffs. The rule 3 of Order I reads as "All persons may be joined in one suit as defendants where—

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

Order I, Rule 3-A provides for separate trials where joinder of defendants may embarrass or delay trial. The rule in question lays down that "where it appears to the court that any joinder of defendants may embarrass or delay the trial of the suit, the court may order separate trials or make such other order as may be expedient in the interests of justice.

The provisions of law as contained in these rules although intended to curtail further litigation of suits but at the same time it also ensures that the trial of a suit should not be embarrassed as a result of joinder of plaintiffs or defendants as the case may be.

It is also noteworthy that as per the provision relating to joinder of plaintiffs/defendants, it is not necessary that all plaintiffs/defendants should join in one suit.

Order I, Rule 5 of C.R.C. lays down that "It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him."

**Mis joinder and Non joinder.**—According to Order I, Rule 9 "No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it".

[Provided that nothing in this rule shall apply to non-joinder of a necessary party.]

Mis-joinder of plaintiffs/defendants takes place when the parties have not joined in accordance with the provisions of Order I, Rules 1 and 3 respectively of the Code of Civil Procedure.

If a necessary party is not joined in a suit, it results in a non-joinder of parties i.e., plaintiff or defendant.

**Striking out or addition of parties.**—The Court enjoys the power of striking out or adding the name of any party whether plaintiff or defendant. This power enables the court to effectually and completely adjudicate and settle all the questions involved in the suit.

Order I, Rule 10 (2) of C.P.C. lays down that "The court at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and add the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

Under the provision of the above rule, the parties are also permitted put up an application for striking out or adding the name of any party the suit whereupon the court will pass appropriate order. This power be exercised by the court at any stage of the proceedings.

The sole object of empowering the court with such a wide power is to eliminate the difficulties as a consequence of mis-joinder and non-joinder of parties, however, in exercising such power the court may impose such terms as deems to be just and proper. The abovementioned provision points towards twofold policy (1) that all the questions involved be settled in a single suit; and (2) that it will avoid further litigation since all the parties have joined in a suit having common interest.

#### References:

1. Jog Lai v.Hamarayan Singh, ILR 10 All 524
2. Vishram Ajun v.Irukulla Shankariah, AIR 1957 Andh. Pra. 784].2
3. Kashi Chaudhary v.Mujtaba Hasan, 1981 BLJ
4. Laxmi v.Puma Chandra, AIR 1935 Cal 770
5. Rani Piar v.Collector, Sub-Division, Abohar, 1994 PunjLJ 410.
6. Venkataswami v. Uppilpalayam V.V.Nidhir, AIR 1935 Mad 117
7. Darul Ulum Islamia v.Civil Judge, Basti, 1986 All LJ 1130]
8. Samar Singh v.Kedar Nath, AIR 1987 SC 1926)
9. .[Nihar Kaur v.Madan Lai, (1987-1) 91 PLR 339]
10. Gopal Ram v.Mohan Ram, 1995 (2) All RC 320]
11. Ram Barai Bhagat v.Munni Lai Singh, 1984 BLJ 23]11
12. Rajendra Singh v.State of Bihar, 1995 ( 1 ) PLJR 474.]



